



November 16, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location, MB Docket No. 16-161

Dear Ms. Dortch:

On September 14, 2016, the National Association of Broadcasters (“NAB”) filed an *ex parte* letter¹ responding to reply comments submitted by several public interest organizations that strongly oppose the Federal Communication Commission’s tentative conclusion to eliminate the correspondence file from commercial broadcasters’ local public inspection files.² Despite the time since NAB’s filing, the National Hispanic Media Coalition (“NHMC”) and Free Press respond now because the Commission’s deliberations on the matter evidently continue. We also used part of the intervening time to gather evidence (attached in Exhibits A through G hereto) refuting NAB’s main claims in that letter as well as NAB’s Reply Comments.³

At the outset, we note that while this marked NAB’s third filing in the docket, not once has it explained why maintaining the correspondence folder is burdensome for broadcasters.⁴

¹ See Letter from Rick Kaplan, National Association of Broadcasters, to Marlene H. Dortch, FCC, MB Dkt. No. 16-161, filed Sept. 14, 2016 (“NAB Letter”).

² Reply Comments of the National Hispanic Media Coalition, the American Federation of Labor and Congress of Industrial Organizations, the Center for Media Justice, Common Cause, Communications Workers of America, Free Press, and Public Knowledge, MB Dkt. No. 16-161 filed Aug. 22, 2016 (“Public Interest Comments”).

³ See Reply Comments of the National Association of Broadcasters, MB Dkt. No. 16-161 filed Aug. 22, 2016 (“NAB Reply Comments”).

⁴ Specifically, NAB has failed to explain the inherent contradiction between its two main positions: one, that eliminating the correspondence folder is burdensome, and two, that few members of the public inspect the public file. See Comments of the National Association of Broadcasters, MB Dkt. No. 16-161 at 1 and 3-4, filed July 22, 2016 (“NAB Comments”).

Instead, NAB relies on two red herring arguments that have nothing to do with the merits of maintaining the correspondence folder, which are made clear by NHMC's comments⁵ and Public Interest Groups reply comments⁶ in this docket.

First, NAB suggests that NHMC does not understand the distinction between the correspondence folders maintained at broadcast stations and public complaints about broadcasters filed at the FCC, which NHMC has obtained through Freedom of Information Act Requests.⁷ NAB claims that NHMC has failed to prove that its employees have ever accessed the correspondence folders at broadcast stations.⁸ Second, NAB claims that Free Press' stance on this issue is inconsistent with past positions.⁹ As explained below, these claims are manufactured distractions from the merits of this proceeding and should be given no weight.

NHMC's initial comments in the record of this proceeding plainly refute NAB's statement that Public Interest Commenters "cannot point to a single instance where they have accessed the physical correspondence files."¹⁰ In its initial comments, NHMC plainly stated that it had "recently inspected WMAL DC's public file, and found that the station had received five emails over the course of the past three months."¹¹ NHMC also stated that it "has used correspondence found in the public file to *inform* grassroots campaigns to hold broadcasters accountable for hate speech over the public airwaves."¹²

To thoroughly discredit NAB's outlandish suggestion that NHMC has never visited a public file,¹³ NHMC gladly provides here further detail on three of many such station visits – including one documented (ironically enough) in one of the public interest filings cited in NAB's letter.¹⁴

⁵ Comments of the National Hispanic Media Coalition, MB Dkt. No. 16-161, filed July 22, 2016 ("NHMC Comments").

⁶ Reply Comments of the National Hispanic Media Coalition, the American Federation of Labor and Congress of Industrial Organizations, the Center for Media Justice, Common Cause, Communications Workers of America, Free Press, and Public Knowledge, MB Dkt. No. 16-161, filed Aug. 22, 2016 ("Public Interest Groups Reply").

⁷ See NAB Reply Comments at 4.

⁸ See *id.*

⁹ See NAB Letter at 3.

¹⁰ NAB Letter at 2.

¹¹ NHMC Comments at 5.

¹² *Id.* at 2 (emphasis added).

¹³ See NAB Reply Comments at 4-5.

¹⁴ NAB Letter at 3 (citing Comments of the Public Interest Public Airwaves Coalition, MM Dkt. Nos. 00-168, 00-44 (Dec. 22, 2011)). In that same filing cited by NAB, NHMC relayed difficulties it faced in obtaining access to the public files of KRCA, a Spanish-language station in Los Angeles. See Comments of the Public Interest Public Airwaves Coalition, MM Dkt. Nos. 00-168, 00-44 at 9 (Dec. 22, 2011).

In the first example of its many public file visitations,¹⁵ and the records it gathered as a result: NHMC employees visited KRCA's public file on May 6, 2011 to gather background information on Liberman Broadcasting, Inc. while preparing an indecency complaint against the program *José Luis Sin Censura*. That investigation ultimately led to a consent decree between Liberman Broadcasting and the FCC, whereby Liberman Broadcasting paid \$110,000 to the U.S. Treasury and agreed to a compliance plan. When they asked to inspect the public files at the station, NHMC employees found that the files took up two large drawers in a filing cabinet and "many of the documents and records were incorrectly filed and were difficult to locate."¹⁶ Nevertheless, NHMC employees were able to identify folders with approximately two dozen letters from the public thanks to this station visit. NHMC employees requested a copy of the entire file and paid \$357 for the copies.¹⁷

Second, on September 30, 2011, two NHMC employees went to the KFI offices in Los Angeles to inspect public files while developing NHMC's public engagement campaign against hate pundits, John and Ken. The public files at KFI were stored in a digital database and were difficult to navigate. To follow up on that visit, an NHMC employee sent an email to a KFI employee requesting copies of several files, including "Public Comments."¹⁸ The requested files were placed on a CD on October 6, 2011 and the NHMC employee picked up the CD the next day free of charge. On that CD, NHMC received 33 txt files with correspondence from the public.¹⁹

Third, on July 19, 2016 three NHMC employees inspected WMAL's public file at its Washington, D.C. office. NHMC's employees sorted through two large filing cabinets and took notes on the content and volume of letters found in the correspondence files. An employee from WMAL supervised the NHMC employees, requested identification, and asked that they identify their organization. NHMC employees were asked to write specifically what portions of the file needed to be copied in the "Welcome to WMAL and our library of Public Files" form.²⁰ Although they requested a copy of the completed version of this form, NHMC's employees were told that the form was "for internal use only."²¹ NHMC requested several copies of specific pieces of

¹⁵ See NHMC Comments at 3. NHMC stated that it "regularly receives calls and emails from consumers across the country expressing grievances about their local broadcasters, and in response, NHMC provides them with a fact sheet about the public file, and directs those individuals to send a letter to the station and visit the public file to learn more about other consumer complaints to the station." *Id.*; see also Attached Exhibit F (NHMC Public File Fact Sheet).

¹⁶ See Paperwork Reduction Act Comments of the Public Interest Public Airwaves Coalition, MM Docket No. 00-168, at 9, filed Jan. 23, 2012 ("PIPAC 2012 Comments").

¹⁷ See *id.* at 10; see also Attached Exhibit A.

¹⁸ See Attached Exhibit B.

¹⁹ See Attached Exhibit G (sample of correspondence from Oct. 2008-Nov 2010). The complete 33 text files ranging from October 2008-May 2011 are stored at NHMC's Headquarters in Pasadena, California.

²⁰ See Attached Exhibit C.

²¹ See Attached Exhibit C. A blank form was provided for NHMC's records.

correspondence, including a sampling of letters and emails received by WMAL between 2012 and 2016, and paid a total of \$7.00 for these copies.²²

As noted above, NAB's letter cites filings made in earlier related proceedings by the Public Interest Public Airwaves Coalition. That *ad hoc* coalition included some of the same groups that joined the Public Interest Groups Reply in this docket, including Free Press. NAB quotes from a 2011 filing²³ that it wrongly touts as proof of Free Press's hypocrisy – all while conveniently ignoring text in that same filing that explains the public interest groups' actual, consistent position on retaining the correspondence file requirement.

The NAB letter triumphantly quotes a lengthy passage from the PIPAC 2011 Comments, which supported the Commission's decision "to bring the public file into the digital age by replacing paper files with an online public file."²⁴ This triumph is short-lived. As the 2011 filing joined by Free Press predicted, putting the public file online would improve access to these materials for many people. Yet it also explained that if the correspondence file could not be moved online because of privacy concerns, the Commission should require broadcasters to "disclose [online] the total number of letters available at the station" and make sure that these letters "are available for public viewing at the main studio consistent with [then] existing public file rules."²⁵

In other words, Free Press and others joining those earlier filings always believed that the correspondence file should be preserved, whether it could be moved online or not. That dispenses with NAB's claim that our arguments here contradict earlier substantive positions.

Not satisfied to mock up claims about a change in substantive positions, however, NAB continues on in the letter to suggest a sort of deeper hypocrisy. This charge falls flat as well. It is not the case that Free Press (and others advocating for online public file access) were ignorant of the unfortunate fact that poor people and people of color too often lack affordable internet options. Without taking time away from the merits of the important questions in this docket, Free Press submits that its decade-long efforts to document shockingly low broadcast ownership levels for women and people of color, along with its equally lengthy advocacy for universal service reform and Lifeline updates, demonstrate its continued commitment to raising up before this Commission issues of economic inequality and racial disparity.

In the selectively excerpted PIPAC filings cited by NAB, Free Press and others suggested that putting the public file online would make it accessible to more people. That fact that is incontrovertible. But those public interest filers nowhere suggested that stations should refuse to accommodate individuals who choose to access the public file in person – and, as NHMC's evidence summarized above and detailed in the attached exhibits shows, it is possible for

²² See Attached Exhibit D and Exhibit E.

²³ Comments of the Public Interest Public Airwaves Coalition, MM Docket Nos. 00-168, 00-44, at 6-7, filed Dec. 22, 2011 ("PIPAC 2011 Comments").

²⁴ *Id.*

²⁵ *Id.* at 29.

individuals to obtain and/or review at a station a copy of the digitally stored files in that station's possession.²⁶ Nor did Free Press and others suggest that all inputs into the online public file must be digitized or made online – somehow confining correspondents who wish to contact local stations to email and Twitter instead of letters and paper submissions.

Therefore the most serious charge that NAB levels at any “interest group,” in its otherwise inaccurate and meritless letter, appears to be the accusation that Free Press expresses more concern today than it used to for access disparities faced by people of color and people with lower incomes. Happily, to the extent there is the any truth whatsoever to the accusation, Free Press is glad to be found guilty as charged. Free Press continues to evolve in its understanding of, and its advocacy regarding, the most serious challenges posed by the continued inequity in our nation's media and telecommunications systems. As just one step of many required to remedy those inequities, the Commission can and should retain the correspondence file requirement so that all people can continue to communicate with broadcasters licensed to serve their communities.

Respectfully submitted,

_____/s/_____
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²⁶ See *supra* note 19 and accompanying text (explaining the process whereby NHMC obtained files on CD from station KFI).